

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOYCE MICHAELS

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social security,

Defendant.

Case No. C04-5245 FDB

ORDER ON ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). This court has jurisdiction to award attorney fees for work before this court under 42 U.S.C. § 406(b). Straw v. Bowen, 866 F.2d 1167 (9<sup>th</sup> Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9<sup>th</sup> Cir. 1987).

Previously, this Court awarded Plaintiff's counsel \$2,066.41 pursuant to the Equal Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$15,732.25. Plaintiff has subtracted from 25% of the past due benefits the amount awarded pursuant to the EAJA and

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1 requests a net § 406(b) award of \$13,665.84, minus an administrative assessment. Plaintiff declares  
2 that of this sum \$10,647.59 is payable by Social Security out of the withheld award of past due  
3 benefits and that \$2,918.25 is payable by DSHS, representing 25% of the retroactive funds paid to  
4 DSHS. The Commissioner has not filed a response to Plaintiff's motion.

5 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld  
6 from the past-due benefits. This 25% limit applies to the total of 42 U.S.C. § 406(a) and 406(b) fees  
7 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4<sup>th</sup> Cir. 1982); Webb v.  
8 Richardson, 472 F.2d 529, 536 (6<sup>th</sup> Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5<sup>th</sup> Cir.  
9 1970).

10 ACCORDINGLY,

11 IT IS ORDERED:

12 Plaintiff's Motion for an Award of Attorney's Fees [DKT #13] is **GRANTED**. Plaintiff is  
13 awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$13,665.84, minus the § 406(d)  
14 administrative assessment. Social Security is directed to pay Plaintiff's counsel the net balance being  
15 withheld of \$10,647.59, minus any applicable administrative fee and DSHS is directed to pay  
16 Plaintiff's counsel the net sum of \$2,918.25.

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18 DATED this 28<sup>th</sup> day of February, 2006.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

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